

# Exhibit 40

# OPUS2

Skatteforvaltningen v Solo Capital Partners LLP & Others

Day 20MT

May 24, 2024

Opus 2 - Official Court Reporters

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1 Friday, 24 May 2024

2 (9.30 am)

3 Housekeeping

4 MR JUSTICE ANDREW BAKER: Good morning, Mr Jones.

5 MR JONES: Good morning. My Lord, one very small point

6 I wish to raise and I'm not going to say anything that

7 Mr Shah shouldn't hear and I'm speaking with

8 Mr Goldsmith's agreement.

9 My Lord, we had between us a disagreement yesterday,

10 as you recall, as to what each of us had said to the

11 other in relation to today's evidence.

12 MR JUSTICE ANDREW BAKER: Yes.

13 MR JONES: I found myself in the early hours of this morning

14 wide awake reliving those conversations and I'm now

15 quite confident that he is right and that I was wrong

16 and what I had done in the fog of war in the afternoon

17 was to cross-wire the consequence of those discussions

18 and what I had reported to my client with the express

19 words that he and I had exchanged, so I have approached

20 him this morning, corrected the relationship between him

21 and I, he wasn't I think unduly concerned by it, but it

22 is right that I correct it, and it is right that your

23 Lordship is told.

24 MR JUSTICE ANDREW BAKER: Very good Mr Jones. While you are

25 on your feet, not relating to that, but — not relating

1 probably would have been doing this anyway, but I think  
2 it is important in the context of his very long  
3 cross-examination that you are as clear as you can be  
4 before you ask any questions: the topic we are going to  
5 deal with now is X, there will be some questions on  
6 that, and when you finish those questions and there is  
7 then another topic, just introduce that, because clearly  
8 for him he is in a sense in the middle of a process of  
9 reliving these events and going through them in an order  
10 and we are asking him to switch into: now let's think  
11 about whatever episode or aspect of the case it is that  
12 might even be jumping around a bit chronologically. Is  
13 that all right?

14 MR GOLDSMITH: Absolutely, my Lord.

15 MR JUSTICE ANDREW BAKER: Good morning, Mr Shah.

16 A. Good morning, my Lord.

17 MR JUSTICE ANDREW BAKER: I hope you understood that  
18 you know, we are handing over to Mr Goldsmith for  
19 cross-examination questions of you on behalf of SKAT  
20 today. He is dealing essentially, as I understand it,  
21 with a series of different and discrete topics and he  
22 will do his best to make clear at the start of each  
23 topic he is going to deal with what it is in general  
24 terms he is turning to, so that you can have your mind  
25 turned to that part of the case rather than the general

1 to that specific point but relating to those same  
2 conversations, have I understood correctly that whatever  
3 else they did or did not do, they identified between you  
4 as legal teams what are the discrete topics Mr Goldsmith  
5 is going to cross-examine?

6 MR JONES: No, we left that entirely to Mr Rabinowitz and  
7 Mr Goldsmith, because they could have done one of two  
8 things. He could have picked up the chronology as it  
9 stood at the time or taken a discrete topic. We had no  
10 reason to interfere with that, so we haven't discussed  
11 it.

12 MR JUSTICE ANDREW BAKER: Mr Goldsmith, as I have understood  
13 it from what Mr Rabinowitz therefore said to me, the  
14 intention — and I think that is the reason I put it  
15 that way to Mr Shah — was that you were somewhat  
16 interrupting the more general chronological narrative  
17 flow of Mr Rabinowitz's cross-examination and taking  
18 discrete topics; is that correct?

19 MR GOLDSMITH: That is correct.

20 MR JUSTICE ANDREW BAKER: If in the light of Mr Jones' indication — and that is fine — that is how the parties have approached it, the particular topics you are turning to have not been shared and therefore by definition they can't have been notified to Mr Shah, I think I will say in fairness to Mr Shah, again you

25 I think I will say in fairness to Mr. Shan, again you

1 chronological flow of events that Mr Rabinowitz was  
2 taking through, all right?

3 A. That is clear, thank you.

MR SANJAY SHAH (continued)

5 Cross-examination by MR GOOL

6 MR GOLDSMITH: Good morning, Mr Shah.

7 A Good morning

7 A. Good morning.  
8 Q. I am going to ask you first some questions about the  
9 Belgian and Austrian trading by GSS clients, if that is  
10 all right.

11 A. Yes

12 Q. So you have already touched on the fact with  
13 Mr Rabinowitz that the GSS trading occurred in respect  
14 of the 15th January 2000.

14 of German and Aus

15 A. Yes, that's correct.  
16 Q. And you have told Mr Rabinowitz that the GSS trading in  
17 respect of Belgian and Austrian shares was structured on  
18 a cum ex basis; that's right, isn't it?

18 a cum-ex basis, that's right, isn't it?

19 A. Yes, that's correct.

20 Q. And you have discussed with Mr Rabinowitz how in the  
21 context of the Danish trading under the GSS Trading  
22 Model, equal and opposite trades were entered into and  
23 then internally settled to zero. I don't intend to go  
24 over that again so far as the Danish shares are  
25 concerned, but can I just ask this: the Belgian GSS

concerned, but can I just ask this: the Belgian GSS

1 MR JUSTICE ANDREW BAKER: A cash collateral amount that will  
 2 match an equity purchase, yes.  
 3 MR GOLDSMITH: Exactly yes, and we can see the cash  
 4 collateral amount here is 228,896,500, yes.  
 5 A. Yes, I see that.  
 6 Q. And the price is 45.7793 per share, yes?  
 7 A. Yes, I see that.  
 8 Q. And the cash rebate interest and cash rebate spread  
 9 figures, that's the interest on the cash collateral that  
 10 the stock lender has to pay, yes?  
 11 A. Yes, I see that.  
 12 Q. And here the interest rate is overnight DKK LIBOR plus  
 13 70 basis points. That is — so in other words it is DKK  
 14 LIBOR plus 0.7%, yes?  
 15 A. Yes, I see that.  
 16 Q. Can we then look at {MTKC6/729.1/1}. This, Mr Shah, is  
 17 another stock loan confirmation from March 2013 with AOI  
 18 as lender and Amalthea as borrower, and again, the way  
 19 that my Lord described, this will be related to  
 20 an equity trade, a short sale trade that will have  
 21 happened a few days earlier, yes?  
 22 A. Okay, yes. So this is unrelated to the one that we just  
 23 saw.  
 24 Q. Yes. And here the notional — the quantity of shares is  
 25 3 million and the notional cash collateral is almost

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1 3 billion Danish krone. That is a huge sum, isn't it?  
 2 A. Probably not in real money, but yes, I agree that is  
 3 a big amount.  
 4 Q. What do you mean not in real money?  
 5 A. That was my idea of a joke. But yes, that is a big  
 6 amount of money.  
 7 MR JUSTICE ANDREW BAKER: I think telling leading counsel on  
 8 behalf of the Danish nation that Danish krone is not  
 9 a real currency was an attempt at humour.  
 10 MR GOLDSMITH: Yes, right, fair enough.  
 11 MR JUSTICE ANDREW BAKER: I understand where you might have  
 12 gone with it, Mr Goldsmith, but on this occasion,  
 13 I think let's just take that as humour.  
 14 MR GOLDSMITH: If I told you that Amalthea had been formed  
 15 in the Cayman Islands with limited capitalisation only  
 16 a month or so before this, it is pretty extraordinary  
 17 for it to be committing to provide to buy shares worth  
 18 nearly 3 billion Danish krone, no?  
 19 A. My view is that the number of days between a company's  
 20 incorporation and the day it starts trading is not  
 21 relevant. I also think the share capital amount is not  
 22 relevant. What I understand from this trade, and  
 23 probably all the trades in GSS, is that they were  
 24 guaranteed by Solo, so if Solo has guaranteed it, then  
 25 that's why those numbers are there. So that — for me,

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1 the answer to your question is it is not surprising.  
 2 Q. So Solo is guaranteeing them for 3 billion Danish krone.  
 3 I can't do the maths off the top of my head, maybe  
 4 Ms Nanchahal will help me, but that's going to be  
 5 hundreds of millions of pounds, is it not? For  
 6 example —  
 7 A. In the region of £300 million.  
 8 Q. And Solo Capital Partners does not have £300 million,  
 9 does it, at this time?  
 10 A. Well, I think if we go back to the Solo Model we will  
 11 see that there are matching incoming and outgoing cash  
 12 amounts and that is why Solo would have been able to  
 13 guarantee a trade such as this.  
 14 Q. But in a sense that is why it makes it so important that  
 15 at the end of the day — from Solo's perspective, at the  
 16 end of the day things do balance perfectly to zero,  
 17 because otherwise Solo is at risk on the guarantee, yes?  
 18 A. Yes. I absolutely agree.  
 19 Q. Can we see here that the interest on the cash collateral  
 20 is overnight DKK LIBOR plus 70; that is 0.7 again, yes?  
 21 A. Yes, that's correct. So it is 70 basis points, which is  
 22 0.7%, yes.  
 23 Q. Thank you. Great. Can we now — we might need to come  
 24 back to those, so don't remove them altogether, but can  
 25 we go, please, to {MTKC1/607/1}. And this is

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1 a spreadsheet, if Ms Nanchahal could control it, please.  
 2 Can we start with the "Statement" tab at the top. This  
 3 is Solo's open position statement for AOI dated  
 4 30 September 2013; do you see?  
 5 A. Yes, I see that.  
 6 Q. Again, just to ground this, this was also a spreadsheet  
 7 that Mr Rabinowitz went through in opening, just so you  
 8 know. If we go to the stock loan — sorry.  
 9 A. Sorry to interrupt. Are we moving away from TDC,  
 10 because I will not be able to keep all these figures in  
 11 my head?  
 12 Q. Don't worry, I will be reminding you. The reason I have  
 13 shown you three sets of trades is because actually their  
 14 accounting is ultimately related, but I will remind you  
 15 of the terms as we go through.  
 16 A. Okay.  
 17 Q. So if we start with — if we start at row 287, you can  
 18 see — there we go, thank you so much — TDC and in row  
 19 289 it has 13 March 2013 and I can remind you that the  
 20 settlement date for the TDC March stock loan was  
 21 13 September 2013 and in F289 it says, "Cash original",  
 22 and that was the amount of cash collateral under this  
 23 loan, just to remind you of those figures.  
 24 Do you see in G289 we have a rate of 0.63%. Do you  
 25 see that?

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